Supreme Court, U.S.
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No. 95-878

In The

Supreme Court of the United States

October Term, 1995

PRODUCTION PLATED PLASTICS, INC., et al.,

Petitioners,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF OF PETITIONER

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REPLY TO THE RESPONDENT'S QUESTIONS PRESENTED

1. The Petition and Response demonstrate agreement that the Fifth Amendment's Due Process Clause was violated if the District Court awarded a civil penalty of 1.5 million dollars without assessing the individual role of each Petitioner in the RCRA[1] violations. The parties therefore agree that the Sixth Circuit Court of Appeals legally erred in concluding otherwise. The question then presented for the Court is whether it should accept this case to correct the legal errors below and compel due process, or consider the errors harmless, despite the fact that the District Court clearly did not assess each Petitioner's actions individually, but rather assessed the penalty "jointly and severally."

2. The parties agree that the Sixth Circuit Court of Appeals erred when finding that the Eighth Amendment's Excessive Fines Clause does *not* apply to RCRA penalties. The parties further agree that the 1.5 million dollar penalty was a fraction of the amount authorized by RCRA (92 million dollars) and that the 1.5 million dollars is comparable to fines assessed in other RCRA cases. All other factors including the three most prominent: gravity, proportionality to other legal violations, and the fact that the fine would disable, contraindicate the penalty. The question for this Court is whether it should accept this case to correct the legal errors below and compel a full Eighth Amendment analysis, or consider the errors to be

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[1] Resource Conservation and Recovery Act of 1976, 42 USC 6901, *et seq.*

REPLY TO THE RESPONDENT'S QUESTIONS PRESENTED – Continued

harmless because only two potential Eighth Amendment factors support the District Court's penalty.

3. The Respondents presently acknowledge that a corporate officer is only jointly and severally liable if he or she "actively participated" in the RCRA violation. When the liability of Mr. Ladney was determined in 1991, some courts erroneously imposed personal liability merely because the corporate officer was the "ultimate decision-maker". The question for this Court is whether the District Court in 1991, applied the "active participation" standard or the "ultimate decision-maker" standard, and if it applied the latter, whether the "law of the case doctrine" precludes the Court from further reviewing that decision, even though it undergirded the penalty award.

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REPLY TO RESPONDENTS' STATEMENT OF THE CASE

Respondents claim PPP violated RCRA by continuing to "operate the facility without a permit for more than two years until December 1987." Resp. 5. Respondents are confused. Whether or not PPP remained in business was irrelevant to whether it violated RCRA. The simple fact that the waste receptacles were not completely removed and disposed of within 160 days of November 8, 1985, in a hazardous waste landfill was the RCRA violation, and it was continuing regardless of whether PPP remained operational. PPP did not deposit "even a scoopful" of waste during 1985 or thereafter ("penalty period"). In fact, PPP stopped depositing waste on the site in 1978.[2] Keeping the plant open for business violated no law. To the contrary, to have closed the plant would have violated state law, since PPP was ordered by the Kalamazoo County Circuit Court to remain open, which it did until late 1988, when it went insolvent and even the state court could not maintain its operations.[3]

REPLY TO ARGUMENT

I. THE LOWER COURTS DID NOT EVALUATE EACH PETITIONER'S BEHAVIOR SEPARATELY WHEN ASSESSING RCRA PENALTIES AND THUS VIOLATED FIFTH AMENDMENT DUE PROCESS.

Lower federal courts have been inappropriately active in extending RCRA and CERCLA liability to corporate officers, at least without allegations and proof sufficient to pierce the corporate veil. This case presents legal

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[2] TR at 881 – Resp. App. 1.

[3] Pet.App. 71, n.9.

issues several steps even further removed from established legal principles. Here, RCRA penalties were extended to the corporate officer on a no-fault, joint and several basis. Even if this Court is inclined to leave the RCRA and CERCLA liability of corporate officers undisturbed, it should be disturbed by the prospect of such officers not only having to carry enormous no-fault personal liability, which in this case will exceed 6 million dollars, but also being burdened with severe penalties, which in this case could have run as high as 92 million dollars, without any due process or Eighth Amendment protection.

The Respondents are quick to suggest that due process was accorded. They argue that the District Court in fact performed the "individual assessment" required by due process, and properly found that Mr. Ladney "actively participated" in the RCRA violations, coincidentally justifying the same 1.5 million dollar penalty levied on the corporate Petitioners. Respondents' arguments cannot survive scrutiny.

Respondents contend that PPP, MCP and Mike Ladney are actually one entity and, therefore, by treating them as a "trinity", the District Court was in fact giving all three an individualized assessment. This reasoning is logically infirm. Rather than establishing that the Petitioners received an individualized assessment, it actually acknowledges that they did not receive such an assessment but offers an excuse that the error was harmless because the corporate veil should have been pierced.

Respondents failed to plead, argue, and certainly, prove that the three Petitioners were actually alter egos of one another. While finding that Mr. Ladney commingled some of his personal assets by creating a "shareholder loan account", the District Court did not find that Mr.

Ladney was the alter-ego of these companies, and certainly the existence of a shareholder loan account, in and of itself, could not support such a finding under Michigan law.[4]

Respondents next argue that any failure by the District Court to give an individualized assessment was harmless because Mr. Ladney was "personally involved in or directly responsible for the acts and violation of RCRA." Not only is this argument unsupported by the record but it also begs the question raised by the Petitioners, namely, that even if a corporate officer is jointly and severally liable with a corporation for RCRA compliance costs, does the Fifth Amendment require a trial court to restrict its additional, punitive penalty analysis to each defendant's separate behavior?

Respondents' *only* alleged evidence of Ladney's involvement in RCRA activities was his Affidavit filed in State Court. This Affidavit merely evidenced some personal knowledge of PPP's efforts to comply with the 1979 state court ordered environmental remediation.

In its totality, here is what the Affidavit stated:

> *"Michael Ladney, being first duly sworn, deposes and says as follows:*
>
> *1. I have first-hand knowledge of the facts described below, and if sworn could testify competently thereon at trial.*
>
> *2. I am the President of Production Plated Plastics, Inc. (the "Company") which operates a facility located in Richland, Michigan.*
>
> *3. The Company has experienced a market decline in the demand for its electro-plated plastics.*
>
> *4. The Company intends to lay-off some of its employees as a result of the market decline.*

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[4] See *Laborer's Pension Trust Fund v. Weinberger Homes*, 872 F.2d 702, 705 (6th Cir. 1988).

5. The Company will retain the employment of personnel necessary to operate the purge wells that treat the groundwater for chromium contamination.

6. This sludge removal operation will not be effected by the work force reduction.

/s/
Michael J. Ladney

This was the sum and substance of the case against Mr. Ladney for RCRA compliance liability *and* the sole individualized evidence against him to support the 1.5 million dollar penalty. Nowhere in the Affidavit is there any discussion of RCRA, RCRA's Part A or B applications, or an RCRA closure plan. Only Paragraphs 5 and 6 even refer to environmental activities. Rather than demonstrating that Mr. Ladney personally directed violations of these environmental laws, these paragraphs suggest the Company was committed to maintaining both the state court-ordered purge well operation and the sludge removal operations. Only "doublethink" would suggest that Mr. Ladney should be penalized for attesting to the fact that PPP intended to maintain the state court remediation project. Certainly, there is nothing herein that even remotely warrants a 1.5 million dollar penalty.

II. THE 1.5 MILLION DOLLAR FINE IS CLEARLY EXCESSIVE UNDER THE EIGHTH AMENDMENT WHEN AN INDIVIDUAL PENALTY ANALYSIS IS APPLIED TO EACH PETITIONER.

Respondents next argue that the Sixth Circuit and District Court's failure to apply an Eighth Amendment analysis was harmless because two factors – the statutory penalty formula and other applications of that statutory formula – support the penalty. Respondents reduce a constitutional analysis to a mere statutory analysis.

This error is clearly material, since this fine cannot be justified under Eighth Amendment standards. Although

paying lip service to the law that disabling penalties are deemed excessive *per se* under the Eighth Amendment,[5] Respondents conclude without explanation that a 1.5 million dollar fine against PPP is not disabling, even though they *concede* that PPP has *no* assets. Resp. 13. As a matter of law, the fine disables PPP.[6]

The fine is also disabling to Petitioner Ladney. The Government's own expert conceded that Ladney's land in Canada had no value if one considers its own pollution problems,[7] which one must before concluding that this asset is available for American purposes. If this asset is set aside, Mr. Ladney has less than 2 million dollars in industrial real estate plus his house available to fund the 3 million dollars in additional RCRA compliance ordered at the penalty trial. The additional 1.5 million dollar fine is clearly disabling, and, therefore, violates the Eighth Amendment *per se*.

Respondents also cannot give a *true* analysis of whether the fine was constitutionally proportionate. While the District Court's factual findings are obviously and exceptionally flawed, Petitioners' Eighth Amendment argument does not require a reconsideration of the facts.[8] The factual findings suffer a more basic problem –

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[5] See *United States v. Halper*, 490 U.S. 435 (1989).

[6] The 1.5 million dollar fine against MCP must also be deemed *per se* disabling given the Respondents' acknowledgement that MCP's sole asset is a piece of property, worth at best 1.4 million dollars.

[7] TR 539-540; Resp. App 8-9.

[8] Respondents argue that the District Court's factual findings are beyond scrutiny because the Supreme Court cannot review factual findings. They cite *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 665 (1987) for this proposition. What *Goodman* actually says is that this Court will review very obvious and exceptional factual errors.

they don't logically lead where the District Court and Respondents would take them.

Let's look at the logic of "factual case" in support of the 1.5 million dollar fine against Mr. Ladney as defined by the Respondents. First, the "high" groundwater contamination figures cited by the Respondents *predate* the RCRA violations. The bad behavior being penalized here is the RCRA violations not prior pollution problems. The fact that groundwater contamination readings were higher before the RCRA violations than after, certainly does *not* suggest that the RCRA violations had any deleterious effect.

Second, Petitioner Ladney's Affidavit attesting to PPP's commitment to state court remediation compliance cannot support a federal law fine. If anything, it indicates that Ladney was a responsible corporate officer who should not be penalized.

Respondents are left with the argument that Ladney has personal wealth. Let's examine more closely whether Ladney's wealth can support a 1.5 million dollar penalty. For example, should Ladney have been fined for not liquidating by November 8, 1985, 3.5 million dollars of his personal real estate, his only demonstrated assets, so that PPP could have complied with the Part B financial assurances and not lost its interim status? Hardly, the first RCRA decision nationally that even suggested that corporate officers might be personally liable was not issued until 1986, a year later.[9]

Should Ladney be fined for not responding to the District Court's 1990 liability finding? Hardly, in 1991, while he was appealing that decision, Ladney took 3

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[9] *United States v. Northeastern Pharmaceutical & Chemical* (*NEPACCO*), 810 F 2d 726 (8th Cir. 1986).

million dollars, the only cash that came into his possession during the penalty period, and removed all hazardous waste on the site.

Can Ladney be penalized for drawing his wealth from the RCRA violations? Hardly, Respondents never proved that Petitioner Ladney made any money personally from the PPP operation and in fact, that during the penalty period, PPP lost millions of dollars in operations.[10] While the District Court found that PPP was owed 2.8 million dollars in accounts receivable from the other DPM Companies, it ignored the undisputed fact that PPP *owed* almost 6.7 million dollars *net* in payables and notes to the other DPM Companies.[11]

The District Court also ignored the undisputed fact that PPP spent the proceeds from these intercorporate loans on PPP's environmental remediation.[12] The District Court also ignored the undisputed fact that Petitioner Ladney's shareholder loan account was 6.5 million dollars, and that collectively this evidence demonstrated that Petitioner Ladney effectively loaned PPP 6.5 million dollars so that PPP could comply with the state court ordered remediation.[13]

When this money is coupled with the 3 million dollar removal of all hazardous waste from the premises, that Petitioner Ladney funded in 1991, Ladney has already paid 9.5 million dollars on PPP environmental remediation. When this money is added to the additional 3 million dollars worth of environmental compliance that the District Court ordered at the 1992 trial, it is undeniable that Ladney's economic exposure, before the fine is paid,

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[10] See TR 915, 1109, Resp. App. 10-11.

[11] See Trial Exhibit R, Resp. App. 12.

[12] See Trial Exhibit S, Resp. App. 13-15.

[13] See Trial Exhibit Q, Resp. App. 16.

will have been 12 million dollars. Considering this level of *personal* liability for a corporation from which Petitioner Ladney drew no money, not even a salary, the District Court's 1.5 million dollar penalty is anything but proportionate.

III. RESPONDENTS' PRESENT ACKNOWLEDGEMENT THAT MICHAEL LADNEY SHOULD ONLY HAVE BEEN FOUND LIABLE IF HE "ACTIVELY CONTROLLED THE WASTE MANAGEMENT POLICIES LEADING TO THE RCRA VIOLATIONS" JUSTIFIES A REVIEW OF LADNEY'S LIABILITY, WHICH WAS *NOT* IMPOSED USING THIS STANDARD.

The Respondents argue that Mr. Ladney's personal liability for the RCRA violations should not be reviewed by this Court because his liability hinged on whether he was "actively involved in controlling the waste management policies of PPP" and the District Court applied such a standard. Resp. 16.

A review of the District Court opinion, however, demonstrates that it actually applied a different test; namely, whether Mr. Ladney as PPP's President had "ultimate decision-making authority" and drew that conclusion strictly from Ladney Affidavit:

> However, defendants provide no evidence that Ladney is not PPP's owner or operator. Defendants offer no explanation of the statements made in Ladney's Affidavit which indicate that he is the ultimate decsion-making authority, or how, as president of PPP, he is to be excluded from the natural and reasonable inference that he had an important say in or actually made the corporate decisions. Accordingly, the Court

> holds Ladney jointly liable with PPP for RCRA and HWMA violations.

Pet. App. 34.

Respondents do not deny that review of a summary judgment liability finding is appropriate during a subsequent review of the relief awarded where a different liability standard emerges under the law or if necessary to avoid a manifest injustice.[14] When they claim that the "active participation in the violation" test has emerged as the standard for corporate officer liability, Respondents effectively admit the first to the two disjunctive tests has been met. The only remaining question is whether the District Court applied that test.

Without a doubt, the District Court applied a different test. As is clear from the above quote, the District Court inferred from Mr. Ladney's Affidavit that he must have ultimate decision-making authority and, therefore, found him personally liable. As was discussed above, nothing in Ladney's Affidavit even remotely suggested that Ladney was actively involved in the particular actions or inactions that produced the RCRA violations. To so conclude mocks the standard and convicts all corporate presidents merely because of their status.

PPP's environmental specialists testified that they had never met nor talked to Mr. Ladney.[15] In light of the emergence of the "active participation standard," the dearth of evidence linking Mr. Ladney to any activity resulting in an RCRA violation, and the direct testimony of those who were involved that Ladney was not involved, this Court must recognize the District Court's

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[14] In fact, the Respondents' Sixth Circuit Brief cited *Coal Resources, Inc. v. Gulf & Western Ind.*, 865 F.2d 761, 767 (6th Cir. 1989) for this proportion.

[15] See Resp. App. at 2-7.

use of an erroneous standard to be material and a manifest injustice. No other fair conclusion is possible and even using the Respondents' acknowledged standard, a review of this finding should occur.

CONCLUSION

This Court frequently accepts cases for review where there is a manifest injustice, especially if that injustice results in a violation of a constitutional right. If our society is to make corporate officers personal guarantors of the environmental remediation of the companies they serve, at least – at the very least – this Court should recognize the applicability of the Eighth Amendment's Excessive Fines Clause and Fifth Amendment's Due Process Clause. Otherwise, a huge and disabling insult, such as was imposed here, can be added to an already enormous liability injury, neither of which was fault based and neither of which can be discharged even by personal bankruptcy.

Respectfully submitted,

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APPENDIX

* * *

[p. 881] disposal location approved by the Department of Natural Resources."

Did PPP follow this particular paragraph?

A Yes, I believe we did.

Q So from 1978 onward, was any newly generated sludge from PPP's operations deposited on the site?

A No, I don't believe. Not even a scoopful.

MR. CHESTER: Your Honor, I'm going to raise an objection that I raised early-on in this procedure – proceedings, excuse me, about the relevancy of the State Court proceeding itself and whether or not PPP was in compliance with the State Court orders. I don't believe that is relevant to this proceeding and this Court's determination as to penalties. So I'll raise that at this point because it's obvious that we're going through this testimony quite at length now.

MR. VAN ESSEN: Well, Your Honor –

THE COURT: Does it relate to good faith?

MR. CHESTER: Compliance with RCRA? I don't believe it does.

MR. VAN ESSEN: Well, Your Honor, I definitely think it relates to that issue. Then you'll also see very shortly evidence that the State Court's rate of removal, it's sludge removal plan and RCRA, a RCRA rate of removal –

* * *

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,
FRANK J. KELLY, Attorney General
for the State of Michigan, ex rel.,
MICHIGAN NATURAL RESOURCES
COMMISSION, and GORDON E. GUYER,
Director of the Michigan Department
of Natural Resources,

Plaintiffs, File No. K87-138-CZ
HON. BENJAMIN F. GIBSON

vs.

PRODUCTION PLATED
PLASTICS, INC.,
and MICHAEL J. LADNEY, JR.,

Defendants.

DEPOSITION OF:
STEVEN D. NOBLE

January 30, 1989
621 North 10th Street
Plainwell, Michigan

Appearances – MARK S. MEADOWS, P-24101
and
WILLIAM MERRILL, ESQ.
Attorneys for Plaintiffs

DOUGLAS W. VAN ESSEN, P-33169
Attorney for Defendants

Recorded By – NETWORK REPORTING
CORPORATION
Sandra L. Corsiglia, CER-3454

* * *

[p. 53] Q You don't know who the corporate officers are? Do you know any of the corporate officers?

A A few of them, yes, that I have had contact with.

Q Who are the ones you've had contact with?

A I have contact with Mr. Breen, the corporate counsel, and Mr. Krockta, who is corporate safety and environmental, and that's about the extent of it.

Q Is Mr. Ladney a corporate officer?

A Yes, he is.

Q Have you even had contact – have you ever had any discussions with him?

A No, I have not.

Q Who hired you?

A Mr. Evans hired me.

Q In your discussions about the – either the layouts or the shutdown of the plant with Mr. Evans, did he ever mention discussing either of those matters with Mr. Ladney?

A He's in contact daily with Mr. Ladney, from what I understand.

* * *

[p. 57] Q You made a statement that you understood Mr. Evans to be in contact daily with Mr. Ladney, How do you know that?

A He receives phone calls from him.

Q How do you know that?

A Because he's said that he's talked to Mr. Ladney or –

Q He tells you that he talks to Mr. Ladney daily?

A Yeah. I – well, not daily, but he receives phone calls. You know, I –

Q You've been present when he's received phone calls from Mr. Ladney?

A Yeah.

Q Have you been present when he calls Mr. Ladney?

A No, I have not.

Q Do you know, when you refer to Mr. Ladney, do you mean Michael Ladney or Nicholas Ladney?

A Michael Ladney.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, FRANK J. KELLY, Attorney General for the State of Michigan, ex rel., MICHIGAN NATURAL RESOURCES COMMISSION, and GORDON E. GUYER, Director of the Michigan Department of Natural Resources,

Plaintiffs,

vs.

FILE NUMBER: K87-138-CZ

HON. BENJAMIN F. GIBSON

PRODUCTION PLATED PLASTICS, INC., and MICHAEL J. LADNEY, JR.,

Defendants.

DEPOSITION OF:

JAMES M. BREITENBACH

February 1, 1989
621 North 10th Street
Plainwell, Michigan

Appearances – MARK S. MEADOWS, P-24101
and
WILLIAM MERRILL, ESQ.
Attorneys for Plaintiffs

DOUGLAS W. VanESSEN, P-33169
Attorney for Defendants

Recorded By – NETWORK REPORTING CORPORATION
Sandra L. Corsiglia, CER-3454

* * *

[p. 6] Q All right. And from August of '85, when you hired on at PPP, until the time you left in June of '88, did you hold the same position during that time period at PPP?

A Yeah.

Q And what was your title?

A Environmental specialist.

Q And what were your duties?

A Well, mainly to make sure the company was in compliance with the environmental regulations as far as I could go, and to actually do the work to keep the company in compliance, revamp the contingency plans. The biggest priority when I first came on was to write the closure plans and carry those out, I guess. And the groundwater monitoring was my responsibility, and miscellaneous sorts of things dealing with the air quality from the paint booths and public health.

Q How about the lagoons at the plant? Did you have any control over those lagoons, or responsibility relating to them?

A Well, I felt I had an input on the handling of material there.

* * *

[p. 12] Q Obviously, if Charles Gilchrist is dead, you didn't consult with him. Who did you then report to after he died?

A Bill Evans.

Q And did you have any discussions with him relating to the closure plans?

A Oh, yeah. The closure plans were a group effect. Everybody had their input as to –

Q Okay. Tell me who else had input besides yourself and Mr. Evans.

A Well, just to bend other people's ear. I talked to John Wuori, who was an industry engineer at the time. And, to some extent, Mike Smith was also involved, as far as any [p. 13] treatment of waters.

* * *

[p. 52] Q When you talked about some of the recommendations you made, you said something about, well, you didn't have the final say. Who did have the final say with respect to environmental matters?

A Bill Evans on certain issues, I'm sure.

* * *

* * *

[p. 539] 20 percent?

A A range of 20 to 30 percent.

Q Basically because of the incovenience [sic] that such a buyer might have to undertake, because it would be unlikely that a buyer would want all those properties and would have to market some of them?

A Yes.

Q Now you testified that under your understanding of Canadian law, the owner of a polluted parcel of land has to clean it up regardless of the cost of the cleanup, at least irrespective of the value of the property. Wouldn't you think that the market – perspective market for all of Mr. Ladney's properties together, that that market would be very reluctant to buy all these properties because of that environmental liability?

A Forming under that scenario, yes.

Q And you would, at least if you were a perspective buyer, want to know the complete extent of that liability, environmental liability on Property 1 before you would make any kind of an offer for these properties en bloc?

A A purchaser in all reality would probably look at Property Number 1, because it's a separate parcel, as excluded and say, "Mr. Ladney, in this instance you can retain Property Number 1."

Q So at the present time, the reality is that no one is [p. 540] likely to buy these properties en bloc?

A With the unknowing of Property Number 1?

Q Yes.

A Till that is probably clarified, yes.

Q So given your premise of your appraisals which is what a buyer – willing buyer would pay for property. And given your testimony now that you don't think anyone right now with this unknown liability, you don't think anyone would by [sic] these properties en bloc, can't we assume that in effect their en bloc value from an appraisal perspective is nil?

A In reality on the en bloc basis, Property Number 1 would not be included.

Q Well, you included Number 1.

A Yes, I do.

Q So let's keep it in there. Isn't the answer to my question yes?

A Till they found out the cost to cure, probably you're correct.

Q Now, let's talk about the concept of severing now. What's your understanding of this trial generally? Do you know what's going on here?

A I'm not privy to everything, no.

Q Well, I don't think anyone is. But certainly you have a general understanding that we're involved in a proceeding that's [sic] deals with an environmental problem –

* * *

[p. 915] proposed closure plan. I understand from our conversation, however, that the rate of removal is the issue of primary concern to your client, and as we discussed, your clients' proposed removal rate will be acceptable."

Q Mr. Evans, I want to focus your attention now on the finances of PPP. I assume that as plant manager, you'd be generally familiar with the finances, expenditures of PPP.

A Yes.

Q Was the environmental cleanup which you've described in some detail here, the sludge removal that was ongoing, the purge system, hydrogeological studies, groundwater monitoring, was that a drain on PPP's resources?

A Yes.

Q Through the 1980s, were those costs increasing?

A Yes.

Q When was the last time PPP made more money than it lost in a year, if you can recall?

A Early '80s. Maybe '84.

Q At any time during 1985, did PPP to your knowledge have $2.3 million that – in cash that it could have put aside in a trust fund for environmental cleanup?

A Not to my knowledge.

Q At any time after 1985, did PPP have such funds?

* * *

[p. 1109] So I got stuck with all of those.

Q How about the Canadian –

A And in Canada –

Q – plants?

A – to avoid a sale of the majority of all of North American Plastics, we were able to sell the tool plant because that wasn't a majority of the plant. So he bought the tool plant, and – but not the North American plant.

Q Okay. Now at this period of time, 1989, did PPP owe the other DPM companies any money?

A Oh, yes. They owed everybody money. We loaned PPP money to keep them going for a long time. I believe keeping them open as long as we did drained some more cash. But the pumping system was expensive. It cost us money every month to run it.

Q So did the other companies loan PPP money for its remediation – environmental remediation problem?

A They had to, because they needed cash to do all that. So the other companies did loan them money. That's how we kept them going, because PPP was losing money. I'm talking lots of money, in the millions of dollars a year.

Q Were any of PPP's assets included in the sale to the Oxford group in the Oxford II transaction?

A It wasn't supposed to be, the way it was first structured. But in our structure of the sale, there were

* * *

DEFENDANTS' EXHIBIT R

As of 1/31/90, Production Plated Plastics, Inc.
Owed the Following Sums to Related Companies
(as shown on attached accountant's worksheet)

Detroit Plastic Molding Company	$2,510,781
North American Plastics Co. Limited less Paragon receivable ($189,038 – 11,230)	177,808
Universal Plated Plastics, Inc.	1,115,192
Advanced Polypro Resins, Inc.	190,147
Production Molded Plastics, Inc.	1,254,155
Production Chemicals and Plastics, Inc.	1,543,872
Nashville Plastic Products, Inc.	180
TOTAL	$6,792,135

DEFENDANTS'
EXHIBIT 5

PPP
CLEAN UP COSTS
2-05-90 to 12-31-90

VENDOR	AMOUNT
A & B Sewer & Septic	1,417.50
A-1 Sanitations Service	1,415.00
Air Equipment	2,458.09
Allied Services	5,400.00
AT & T	764.50
Bact Engineering	3,504.50
BAE Industrial	2,043.75
Best, William	15,682.40
Bio Recovery Systems	79,982.80
Chem Met Services	550.00
C & L Construction	71,780.00
Consolidated Final	38,654.80
Consumers Power	83,266.72
Detrex Corp	1,320.00
Endo-Exo Therm	155,380.00
Envirite Corp.	35,301.45
Environmental Sci. & Engr.	47,514.12
Fishbeck, Thompson, et al.	36,831.13
Gulf Lake Sewer	138,327.72
Hock Co.	528.61
Haviland Products	98,654.04
Inmetco	80.00
KAR Laboratories	1,448.00
Leonard Industries	15,040.20
Metro Environmental	5,860.00
Michigan Airstar	554.21
Michigan Bell	2,268.31
Overland Transport	179.50
Northern A-1 Sanitation	20,650.00
Pak-Sak	1,098.74
Polypure	17,879.20
Stanco	358.79
Terra Environmental	11,885.75
Waste Management of Mich	2,842.34
	913,907.15

Invoices	913,907.15	PPP
Mgr's Salary	46,958.39	FISI
Hourly Wages	128,762.76	FISI
Benefits	30,751.20	FISI
Purge System	499,177.40	MCP
	1,619,558.70	

PPP
CLEAN UP COSTS

	Environmental & Pollution Costs 641-7351	Sludge Removal 642-	Hourly Labor & Benefits	Supr, Legal, Administrative	Capital Fund	Total
1-31-90	11,376.96	166,075.82	121,260.00	90,000.00		388,672.78
5-31-89	71,257.57	472,090.61	169,900.00	120,000.00		833,248.18
5-31-88	101,751.93	298,574.68		105,000.00		505,526.61
5-31-87	56,027.44	205,227.14	147,000.00	105,000.00	15,993.93	527,448.51
5-31-86	140,715.82	436,746.30	136,700.00	100,000.00	3,071.62	817,233.74
5-31-85	134,847.68	313,839.49	127,100.00	100,000.00		675,789.17
5-31-84	108,407.69	116,887.47	59,000.00	50,000.00	3,558.61	337,853.77
5-31-83	4,131.32	12,094.79			110,101.40	156,327.31
5-31-82	23,557.40	22,539.54				46,096.94
5-31-81	5,277.57	5,159.56			4,257.10	14,694.43
5-31-80	33,522.58	13,801.68			18,241.00	65,565.26
5-31-79	13,818.54	6,030.10			13,320.00	33,168.64
	704,714.50	2,099,067.48	760,900.00	670,000.00	168,543.36	4,403,445.34
2-03-90	Invoices Exp	913,907.15	PPP			
	Mgrs Sal	16,958.39	FISI			
	Hourly Wages	128,762.76	FISI			
	Benefits	30,751.20	FISI			
	Purge Sys	499,179.40	MCP			
		1,619,558.90				

Prior to 2-04-90	4,403,425.34
Subsequent to 2-04-90	1,617,558.90
	6,022,984.24

PPP
CLEAN UP COSTS

	Environmental & Pollution Costs 641-7351	Rubbish Removal 642-7351	Labor Est	Burden	Total
1-31-90	11,276.76	166,075.52			177,472.78
5-31-89	71,257.57	472,090.61			543,348.18
5-31-88	101,371.93	274,584.68			375,976.61
5-31-88	560.00	23,990.00			24,550.00
5-31-87	56,027.44	205,227.14			261,254.58
5-31-86	140,715.82	436,746.30			577,462.12
5-31-85	134,849.68	313,837.49			448,689.17
5-31-84	108,407.69	116,887.47			225,295.16
5-31-83	4,131.32	42,094.29			46,226.11
5-31-82	23,557.40	22,539.54			46,096.94
5-31-81	5,277.57	5,157.86			10,437.43
5-31-80	33,522.58	13,801.68			47,324.76
5-31-79	13,818.54	6,030.10			19,848.64
	704,714.50	2,099,067.48			2,803,981.98

CAPITAL ITEMS

5-31-83	Purge Wells	110,101.20		
5-31-84	Waste Treatment	3,558.61		
5-31-85	Waste Treatment	4,257.00		
5-31-86	Waste Treatment	3,071.62		
5-31-87	Illegible	15,993.93		
5-31-88	Illegible	12,500.00		
5-31-80	Illegible	5,741.00		
5-31-77	Illegible	6,620.00		
5-31-88	Illegible	6,700.00	168,543.06	
			2,772,528.34	

Enviro Exp	Waste & Sludge Removal	Capital		
704,414.50	2,099,067.48	168,543.36	2,772,525.34	1979 to 1-31-90
			1,475,580.72	2-05-90 to PRESENT
			4,248,106.06	Total

DEFENDANTS'
EXHIBIT Q

LOANS (FROM) TO STOCKHOLDERS

@ 1/31/90

			Initials Date		
			Prepared By		
			Approved By		
	M/L 3671, 3274	MKL 3672	CAROL	DOUG	NICK
				(3,755.21)	
DPM	(4,426,185.59)	(646,584.22)	(103,207.50)	(5,064.58)	(103,207.50)
NAP	-	-			
PAR					
UPP	(127,500.00)				
CORP					
APR					
MCP	(427,500.00)	(42,750.00)			
PPP	(316,539.81)	(42,750.00)			
PMP	27,245.85				
	530,000.00				
PCP	(1,736,293.52)				
NPP	(251,872.68)				
	6,728,645.72	132,084.22	7,460,729.94		